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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,574	10/20/2003	Eric Owen Fehlberg	CRYECAL-14	8446
36528	7590	01/17/2007		
STIENNON & STIENNON 612 W. MAIN ST., SUITE 201 P.O. BOX 1667 MADISON, WI 53701-1667			EXAMINER MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3781	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/17/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/689,574

Applicant(s)

FEHLBERG ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7-11,13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-11,13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the material of textured mechanical structure, the material with projecting fingers, and the small pyramids in claim 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"GREPTILE" is a trademark name thus render the claims in definite. Ex parte Simpson, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade

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name cannot be used properly to identify any particular material or product. In fact, the value of a trademark would be lost to the extent that it became descriptive of a product, rather than used as an identification of a source or origin of a product. Thus, the use of a trademark or trade name in a claim to identify or describe a material or product would not only render a claim indefinite, but would also constitute an improper use of the trademark or trade name.

3. Claims 1-5, 7-11, and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Swetish (5954253), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Swetish '253. Swetish teaches a rigid back plate 18, a waist belt 96 positioned frontward of the back plate, a rigid waist plate formed by portions 86, and a cushion 20. With respect to the rigid waist plate being frictionally engaged with the rigid back plate. It is noted that prior to the engagement of portion 80 the rigid back plate and the waist plate engaged each other. With respect to the friction load transfer surface, it is noted that any surfaces would inherently have friction forces, thus, there would be some frictional forces between the surface (identified by 42, 52, 71 in Fig. 12) and the inner surface of portion 40 (opposite of surface 40 in Fig. 12) and prior to the movement from opening 130 to portion 132, the back plate and belt are not restricted at all (similar to that of removing the belt).

In the alternative, it would have been obvious to one of ordinary skill in the art to eliminate the attachment means 80 when its function is not desired. See, *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969). The elimination of the attachment means would allow the back plate and rigid back plate frictionally engaged as claimed.

Regarding claim 3, note the shell inside the pack and straps as shown in Fig. 2.

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Regarding claims 5 and 11, note that portion 52 is angled inward in Fig. 3 therefore the angle is less than 180 and more than 90 degrees as claimed.

Regarding claim 7, note the shell in Fig. 1.

4. Claims 4, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swetish in view of Lowe (4860936) or Wickersham (4871102). Either Lowe, col. 4, ln. 65, or Wickersham, col. 3, ln. 58) teaches that it is known in the art to provide a base for a carrying device made from urethane, it would have been obvious to one of ordinary skill in the art to make the back plate and the waist plate from urethane plastic to provide the desired material.

5. Claims 5, and 11 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Swetish '253 in view of Gregory (5361455). Gregory teaches that it is known in the art to provide a back plate that is curved about the back surface with the claimed angle (Fig. 2). It would have been obvious to one of ordinary skill in the art to provide a curved back plate to provide enable one to wear the device comfortably.

6. Applicant's arguments have been fully considered but they are not persuasive. As set forth above, with respect to the friction load transfer surface, it is noted that any surfaces would inherently have friction forces, thus, there would be some frictional forces between the surface (identified by 42, 52, 71 in Fig. 12) and the inner surface of portion 40 (opposite of surface 40 in Fig. 12) and prior to the movement from opening 130 to portion 132, the back plate and belt are not restricted at all (similar to that when removing the belt). Thus the device in Swetish meets the claimed limitations. Furthermore, the claims must be distinguished from the prior art in term of structure rather than function. In re Danly, 263 F.2d 844, 847 (CCPA 1959). Furthermore, apparatus claims cover what a device is, not what a device does, Hewlett-Packard Co. v. Bausch

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& Lomb Inc., 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114. In this case, there is no structural difference between the contact surfaces of Swetish and the claimed frictional surfaces. Furthermore, the examiner submits that any surfaces when contact with each other, would inherently have some frictional forces. The term "highly" textured mechanical structure does not impart any structure at all to the contact surfaces in Swetish.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai   
Primary Examiner  
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